

REMARKS

Reconsideration and allowance of the pending claims in view of the following remarks are requested.

Claim Rejections – 35 U.S.C. §103

Claims 1-7, 9-11, 13-18, 20-22, 28-45, and 47-49 are rejected under 35 U.S.C. §103 over Moreno et al. (US 2001/0047137) in view of Tan et al. ("Multivariate calibration of spectral data using dual-domain regression analysis," 2003). Claims 8, 24, and 35 are rejected under 35 U.S.C. §103 over Moreno et al. in view of Tan et al. in further view of Carr (US 2004/0243004). Claims 19, 23, 25, 46, and 50-51 are rejected under 35 U.S.C. §103(a) over Moreno et al. in view of Tan et al. in further view of Braun et al. (US 6,321,164). Claims 26 and 52 are rejected under 35 U.S.C. §103 over Moreno et al. in view of Tan et al. in further view of Zelenchuk (US 6,768,918). Applicant respectfully traverses these rejections.

All rejections are at least in view of Tan et al., however, Tan et al. is not available as a reference because it does not qualify as prior art under 35 U.S.C. §102. Consequently it cannot be used as a reference under 35 U.S.C. §103. In particular, Tan et al. does not qualify under either of paragraphs (a) or (b) of 35 U.S.C. §102.

Tan et al. does not qualify under 35 U.S.C. §102(a) because Tan et al. describes Applicant's own work. Tan is the sole inventor of the claimed invention, and Tan was the only author of Tan et al. to conceive of or develop those concepts in the reference which are relevant to the invention. See attached Declaration under 37 CFR § 1.132 of Huwei Tan (See also MPEP § 2132.01 and *In re Katz*, 687 F.2d 450 (CCPA 1982)). Therefore, the "by others" requirement of 35 U.S.C. §102(a) is not met and Tan et al. does not qualify under 35 U.S.C. §102(a) to be used as a basis for a 35 U.S.C. §103 rejection.

Tan et al. does not qualify under 35 U.S.C. §102(b) because it was published May 8, 2003, after the critical date of the present application, April 1, 2003. A printout is attached to this response showing the Tan et al. publication date as indicated on-line by

the publisher. Therefore, the "one year prior to the date of the application" requirement of 35 U.S.C. §102(b) is not met and Tan et al. does not qualify under 35 U.S.C. §102(b) to be used as a basis for a 35 U.S.C. §103 rejection.

With Tan et al. removed as not qualifying under 35 U.S.C. §102 to be used as a basis for a 35 U.S.C. §103 rejection, the remaining references do not make up for the deficiencies of Tan et al. and do not teach or suggest all elements of any claim. Therefore, Applicant respectfully submits that all claims are allowable over the remaining references, and that all rejections have been traversed.

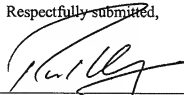
All rejections having been traversed, it is respectfully submitted that the present application is now in condition for allowance, and a notice to that effect is earnestly requested. The Examiner is invited to telephone the undersigned if it is deemed to expedite allowance of the application.

In the event this paper is not considered to be timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fee for such an extension together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account No. 02-2135.

Respectfully submitted,

Date: 9/28/09

By


Richard Wydeven
Attorney for Applicant
Registration No. 39,881
ROTHWELL, FIGG, ERNST & MANBECK, p.c.
Suite 800, 1425 K Street, N.W.
Washington, D.C. 20005
Telephone: (202)783-6040

Enclosures

-Declaration Under 37 CFR § 1.132 of Huwei Tan

-Printout from the publisher website for Tan et al. publication